

Indiana **ENERGY**
Association

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Ed Simcox, CEO

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Boonville Natural Gas Corp.

Citizens Energy Group

Community Natural Gas Co., Inc.

Duke Energy

Indiana Michigan Power

Indiana Natural Gas Corp.

Indianapolis Power & Light Company

Kokomo Gas & Fuel Co.

Midwest Natural Gas Corp.

Northern Indiana Fuel & Light Co.

Northern Indiana Public Service Co.

Ohio Valley Gas Corp.

Sycamore Gas Co.

Vectren Energy Delivery of Indiana, Inc.

THE VOICE FOR INDIANA ENERGY

February 26, 2010

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DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT
OFFICE OF LAND QUALITY

Ms. Janet Pittman
Rules Development Branch
Office of Legal Counsel, MC 65-46
Indiana Department of Environmental Management
100 North Senate Avenue
Indianapolis, Indiana 46204-2251

**RE: Comments of the Indiana Utility Group ("IUG") on IDEM's 2010
Draft List of Impaired Waters; Consolidated Assessment and Listing
Methodology**

By this letter, we respectfully submit these comments for your consideration in response to the Indiana Department of Environmental Management's ("IDEM") 2010 Draft List of Impaired Waters; Consolidated Assessment and Listing Methodology (collectively the "303(d) list" or "2010 Draft List"). These comments are offered on behalf of the Indiana Energy Association ("IEA") and other partners to this effort collectively referred to as Indiana Utility Group ("IUG"). The IUG for purposes of this rulemaking includes the following companies:

Citizens Energy Group
Dominion State Line Energy
Duke Energy
Hoosier Energy REC, Inc.
Indiana-Kentucky Electric Corporation
Indiana Michigan Power
Indianapolis Power & Light Company
Northern Indiana Public Service Co.
Vectren Energy Delivery of Indiana, Inc.
Wabash Valley Power

The IEA is an association of the 13 Indiana investor-owned electric and gas utilities and one charitable public trust gas utility which represent over 97 percent of the baseload electricity generating capacity in the state which is impacted by these rules. The IEA members listed above and the aforementioned individual non-member companies, collectively referred to as the "Indiana Utility Group" or "IUG" operate approximately 21,374 MW of coal-fired capacity in Indiana and serve over 4,000,000 Indiana customers. The Indiana Utility Group is committed to working with IDEM to develop an appropriate water quality regulatory program that provides a 303(d) list in an appropriate and effective manner.

The IUG supports the comments submitted on this matter by the Indiana Coal Council and incorporates them by reference. This set of comments briefly highlights our fundamental concerns with the legality of the 2010 Draft List and the deficiencies found therein. As a matter of public policy, IDEM must promulgate water quality standards ("WQS") in accordance with the Clean Water Act ("CWA"). WQS are the foundation of the water quality-based control program mandated by the CWA. WQS define the goals for a waterbody by designating its uses, setting criteria to protect those uses, and establishing provisions to protect water quality from pollutants. The CWA requires states to review the WQS every three years. These WQS are subject to U.S. EPA approval. A WQS consists of four basic elements:

1. designated uses of the water body (e.g., recreation, water supply, aquatic life, agriculture);
2. water quality criteria to protect designated uses (numeric pollutant concentrations and narrative requirements);
3. an antidegradation policy to maintain and protect existing uses and high quality waters; and,
4. general policies addressing implementation issues (e.g., low flows, variances, mixing zones).

States work to adopt water quality criteria with sufficient coverage of parameters and of adequate stringency to protect designated uses. In adopting criteria, states may:

1. adopt the criteria that U.S. EPA publishes under § 304(a) of the CWA;
2. modify the § 304(a) criteria to reflect site-specific conditions; or,
3. adopt criteria based on other scientifically-defensible methods.

States typically adopt both numeric and narrative criteria. Numeric criteria are important where the cause of toxicity is known, or for protection against pollutants with potential human health effects. Narrative criteria are also important. Narrative "free from" toxicity criteria typically serve as the basis for limiting the toxicity of waste discharges to aquatic species (based on whole

effluent toxicity testing). Narrative criteria are more difficult to implement, because they lack a consistent numeric value.

These criteria must be used to properly prepare the 303(d) list. The IUG agrees with the conclusion reached in the thorough comments submitted on this matter by the Indiana Coal Council that rulemaking must be conducted by IDEM to determine impairment of aluminum and iron. Based on IDEM's current lack of engagement of the statutory required public notice and comment process in determining impairment of aluminum and iron, the values provided are arbitrary and capricious, and should not be included in the Draft 2010 List. These values must go through proper scientific and legal avenues before being used in the Draft 2010 List.

In addition, the U.S. Environmental Protection Agency ("U.S. EPA") must approve IDEM's 303(d) list prior to IDEM developing total maximum daily loads ("TMDLs") for impaired waters necessary to comply with WQS. IDEM, in an arbitrary and capricious fashion, relied on a Draft TMDL for the Busseron Creek Watershed, which has not received either state or U.S. EPA approval, to classify 52 water bodies as "Category 4A" waters. This is in violation of the CWA and must be corrected to comply with the CWA design process.

The IUG urges the agency to follow the proper CWA protocol in its efforts to create the 2010 Draft List. It is imperative that Indiana have a state water quality program that is legally defensible as the regulated community makes investments in reliance upon a valid water quality program.

Thank you for the opportunity to provide these comments. If you have any questions or concern regarding our comments, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Stan Pinegar". The signature is fluid and cursive, with the first name "Stan" being more prominent than the last name "Pinegar".

Stan Pinegar, President
Indiana Energy Association
On behalf of the Indiana Utility Group